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OFFICE OF PETITIONS

In re Application of :
Adam Semlyen and Milan Graovac :
Application No. 10/809,473 : DECISION REFUSING STATUS
Filed: March 26, 2004 : UNDER 37 CFR 1.47(a)
For: DIAGNOSIS OF DISEASE BY :
DETERMINATION OF ELECTRICAL NETWORK
PROPERTIES OF A BODY PART

This is in response to the petition under 37 CFR 1.47(b), filed December 16, 2004 which has been treated as a petition under 37 CFR 1.47(a).¹

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 26, 2004 without an executed oath or declaration and naming Adam Semlyen and Milan Graovac as joint inventors.

Accordingly, on June 16, 2004, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

¹ A petition under 37 CFR 1.47(b) is inappropriate in this instance since all but one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign, accordingly the petition will be treated as a petition under 37 CFR 1.47(a).

In response, on December 16, 2004, the instant petition and a four (4) month extension of time were filed.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks item (1), as set forth above.

As to item (1), applicant appears to demonstrate that the non-signing inventor was only presented with the declaration. Unless the non-signing inventor was presented with a copy of the application papers (specification, claims and drawings), the non-signing inventor could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given. Accordingly, applicant failed to show or provide proof that the inventor has refused to sign the declaration. See MPEP 409.03(d). Petitioner should show that a copy of the application papers was presented to the non-signing inventor, but that he did not respond to, or refused, the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3228.



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